NOS. 21,300 and 21,448

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BERT KENNETH KANEWSKE,

Appellant,

v.

PAUL H. NITZE, Secretary of the United States Navy; CAPTAIN DOUGLAS H. PUGH, Commanding Officer, United States Naval Station, etc., et al.,

Appellees.

APPELLEES' BRIEF

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AUTHORITIES CITED

CASES

AUTHORITIES CITED, continued

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JURISDICTION

Appellees do not question the jurisdiction of this Court.

STATEMENT OF THE CASE

Appellant Bert Kenneth Kanewske was born on August 27, 1946. He is a male citizen of the United States, subject to the Universal Military Training and Selective Service Act. On June 18, 1965

he voluntarily enlisted in the United States Navy for a period of four years, and pursuant to said voluntary enlistment contract duly swore that he would support and defend the Constitution of the United States against all enemies foreign and domestic:

> " * * * I will obey the orders of the President of the United States and the orders of the officers appointed over me * * * So help me God * * *."

On July 12, 1965, in order to receive training in the Nuclear Field Program, he voluntarily agreed to extend the period of his enlistment for two years from the date of its expiration.

On December 2, 1965, pursuant to Bupers Inst. 1616.6 (21300 Resp. Exh. C, superseded by C.5210 Bupers Manual (21300 Resp. Exh. D), a copy of C-5210 attached hereto as Appendix I, he requested to be discharged from naval service by reason of conscientious objection.

On December 30, 1965, pursuant to 5210 (2)(4)(d) of Bupers Manual (Resp. Exh. D 21300), and Department of Defense Directive 1300.6, (Resp. Exh. F. 21300), a copy of which is attached hereto as Appendix II, appellant's request was referred to the Director of Selective Service. By letter dated January 3, 1966 the Director of Selective Service informed the Chief of Naval Personnel to the effect that petitioner's request for discharge and supporting documents did not meet requirements under Selective Service regulations to warrant classification as a conscientious objector. On January 28 his request was disapproved, and he was so notified. (Resp. Exh. B. 21300 is the certified administrative record containing the pertinent documents.)

At no time prior to his enlistment did petitioner claim to be a conscientious objector to participation in war (Appellant's brief, p. 2.) After appellant was denied a discharge, he refused to obey orders. This began when he failed to report on board the USS America, pursuant to orders on March 13, 1966, and remained absent without proper authority until March 28, 1966. The charges and

specifications are set forth in the Amendment to Answer to Petition for Writ of Habeas Corpus in Case No. 21,300 (R., p. 13).

No. 21,300 involves the petition filed prior to the court-martial. No. 21,448 involves the petition filed after the court-martial. In the meantime, appellant has completed his prison sentence, and an appeal is pending before the Armed Services Court of Military Appeals (ASCMA).

QUESTION PRESENTED

Did the District Court have jurisdiction by habeas corpus to discharge an enlisted man from theService on his claim to conscientious objection to military service?

ARGUMENT

There is no question that appellant is an enlisted man in the Navy. His original contract, June 18, 1965, was for four years, which he extended for an additional two years on July 12, 1965, to gain the advantage of the special school.

His request for discharge having been denied, he then resorted to his own devised course of action and refused to obey lawful orders, beginning with a failure to report on board ship as ordered, and remaining on unauthorized absence for a period of 15 days. A General Court-Martial was ordered on this charge and several other charges.

His first petition in effect says, "the Navy can't court-martial me for refusing to obey orders, because I am conscientiously opposed to military service and therefore the Court must discharge me from the Service."

The Supreme Court of the United States in 1890 in In Re Grimley, 137 US 147, very clearly identified the status of an enlisted man. Petitioner Grimley was found guilty by a court-martial of the crime of desertion. While serving his sentence, he sued out a writ of habeas corpus. The District Court discharged him from custody and the Circuit Court affirmed. The Circuit Court affirmed on the finding that petitioner was 48 years of age at the time of enlistment, although he had represented himself to be 28, and that the enlistment was void.

At page 150 the Supreme Court said,

> "it cannot be doubted that the civil courts may in any case inquire into the jurisdiction of a court-martial, and if it appears that the party condemned was not amenable to its jurisdiction, may discharge him from the sentence. And, on the other hand, it is equally clear that by habeas corpus the civil courts exercise no supervisory or correcting power over the proceedings of a court-martial; and that no mere errors in their proceedings are open to consideration. The single inquiry, the test, is jurisdiction."

Smith v. Whitney,
116 US 167, 177

Burns v. Wilson,
346 US 137

Hiatt v. Brown,
339 US 103

Gusik v. Schilder,
340 US 128

In Grimley, the Supreme Court at pages 151-152, went on to consider the enlistment contract as follows:

> "Enlistment is a contract; but it is one of those contracts which changes the status; and, where that is changed, no breach of the contract destroys the new status or relieves from the obligations which its existence imposes.
> * * * *

"By enlistment the citizen becomes a soldier. His relations to the State and the public are changed. He acquires a new status, with correlative rights and duties; and although he may violate his contract obligations, his status as a soldier is unchanged. He cannot of his own volition throw off the garments he has once put on, nor can he, the State not objecting, renounce his relations and destroy his status on the plea that, if he had disclosed truthfully the facts, the other party, the State, would not have entered into the new relations with him, or permitted him to change his status. Of course these considerations may not apply where there is insanity, idiocy, infancy, or any other disability which, in its nature, disables a party from changing his status or entering into new relations. But where a party is sui juris, without any disability to enter into the new relations, the rule generally applies as stated. A naturalized citizen would not be permitted, as a defence to a charge of treason, to say that he had acquired his citizenship through perjury, that he had not been a resident of the United States for five years, or within the State or Territory where he was naturalized one year, or that he was not a man of good moral character, or that he was not attached to the Constitution. No more can an enlisted soldier avoid a charge of desertion, and escape the consequences of such act, by proof that he was over age at the time of enlistment, or that he was not able-bodied, or that he had been convicted of a felony, or that before his enlistment he had been a deserter from the military service of the United States. These are

"matters which do not inhere in the substance of the contract, do not prevent a change of status, do not render the new relations assumed absolutely void. And in the case of a soldier, these considerations become of vast public importance. While our regular army is small compared with those of European nations, yet its vigor and efficiency are equally important. An army is not a deliberative body. It is the executive arm. Its law is that of obedience. No question can be left open as to the right to command in the officer, or the duty of obedience in the soldier. Vigor and efficiency on the part of the officer and confidence among the soldiers in one another are impaired if any question be left open as to their attitude to each other. So, unless there be in the nature of things some inherent vice in the existence of the relation, or natural wrong in the manner in which it was established, public policy requires that it should not be disturbed."

In re Morrissey
137 US 157

Bell v. U. S.
366 US 393, 402

An enlisted man in the service is under no restraint other than the normal restraint of movement incident to his status as a member of the armed forces.

Wales v. Whitney
114 US 564

U. S. ex rel. McKiever v. Jack, 2 Cir.
351 F.2d 672

McCord v. Page, 5 Cir.
124 F.2d 68

Petition of Green, (DC SD Cal.)
156 F. Supp. 174;
app. dismissed 264 F.2d 63, 9 Cir.;
cert. den. 359 US 917

Brown v. McNamara (DC NJ)
263 F. Supp. 686

Noyd v. McNamara, (DC Colorado)
#67 C-143, April 25, 1967;
aff., No. 9440, 10 Cir., May 16, 1967;
copy attached as Appendix III.

The petitions for habeas corpus herein, insofar as they are directed to securing appellant's discharge from the service, are within the proposition that an enlisted man in the service is under no restraint other than the normal restraint incident to his status. If directed to the court-martial proceedings, there is no question that he was restrained beyond the normal restraint incident to his status.

If the jurisdiction of the court-martial is not subject to challenge, or is sustained, then appellant is under no restraint because of the continued performance of his enlistment contract.

Appellees' position has been well stated by Judge Lane in Brown v. McNamara, supra, beginning on page 691:

> "In the instant case the prescribed procedures were followed and it was determined that petitioner was not entitled to either I-O or I-A-O classification. We are now asked to review this determination, it being alleged that it was arbitrary and without basis in fact.
>
> "We are dealing here with matters within the control of the Secretary of the Army. Article I, § 8, cl. 14 of our Constitution provides that the President shall be the Commander in Chief of the Army and Navy of the United States and that Congress shall have power to make rules for the government and regulations of the land and naval forces. To a large extent this power has been delegated to the executive branch. Section 3012 of 10 U.S.C. gives the Secretary of the Army broad authority and responsibility with respect to the conduct of the affairs of the Army and in particular his power to discharge enlisted members of the Army before their term of services expires is expressly granted in section 3811(b) of 10 U.S.C.
>
> "The administrative scheme with which we are dealing is designed to create a minimum of disruption of the internal affairs of the Army,--the decision of the departmental headquarters is final. The matter is thus expeditiously handled and during the pendency of the proceedings the applicant is reassigned to duties providing a minimum of conflict with his

"professed beliefs. If discharge or assignment to non-combatant service is denied, he is then returned to normal service and treated like other members of the military.

"[10] It is our belief that this is where the matter should end. It should not be prolonged by bringing the controversy into the courts of law. Cf. Switchmen's Union of North America v. National Mediation Board, 320 US 297, 305, 64 S.Ct. 95, 88 L.Ed. 61 (1943). In arriving at the decision of whetherto accept jurisdiction, we feel that the effect on the military of judicial involvement in the administrative scheme is a very relevant consideration. Acceptance by us of jurisdiction to review the factual basis of the administrative determination could seriously disrupt the internal operations of the military. By the time the matter was reviewed by us and disposed of on appeal an additional year would ensue before 'final' determination. However, without review by the judiciary the military can render a 'final' decision within a relatively short period of time.

"Under the present scheme during the pendency of the administrative determination the military tries to assign the applicant to a non-combatant job. If we were to accept jurisdiction, would the military be expected to set this man aside for the additional time which it takes for his case to move through the courts? 3 The question causes us

"3. Admittedly, they are able to absorb those who have been classified I-A-O and assigned to non-combatant service, but in those cases the man has already proved that he is entitled to the classification.

"great concern. The reason that we are so concerned with the status of the applicant while his case is pending relates to the very nature of the claim of conscientious objection. It appears to us that it will be very difficult for the military to effectively integrate these applicants into any form of combatant training or service while their cases are still being acted upon. It is likely that these applicants will face court martials rather than comply with orders, so they will be able to reinforce the evidence as to the sincerity of their beliefs and their entitlement to discharge or reassignment. [4]

"We do not wish to foster a situation which results in having part of what is supposed to be our active force immobile and entangled in litigation. How can the military efficiently devote its facilities and personnel to training a military unit if it cannot rely on those who have been properly inducted and are subject to its control? It is one thing for the courts to be in the middle of the thicket on the issue of pre-induction classification and on the issue of whether the proper form of discharge has been granted. Such litigation at the beginning and end of the military term of service is not nearly as disruptive to the function of the armed services as that which threatens the very utilization of the manpower which has been assembled for active service.

"4. While they may continue even after their cases are final, we do not feel that it will occur with as much frequency.

"In those cases in which the courts have accepted jurisdiction to review matters relating to persons already in the military the question involved something more than whether the factual determination was valid. In Orloff v. Willoughby, 73 S.Ct. 433, 2 L.Ed.2d 503 (1958), the question was whether the military was acting within its statutory authority. In our case the petitioner has been properly inducted and it is not alleged that the procedure used was in excess of statutory power. We are asked here merely to determine if there is any basis in fact for the determination which was made by the adjutant general. Even this narrow scope of review could result in the disruption of military operations discussed above. It is our feeling that the benefits to be derived from the added safeguard of having us review the administrative determination are outweighed by the burdens on the military which would result. Consequently, we refuse to accept jurisdiction to pass on the factual adequacy of administrative decision."

Appellant argues:

That there is a constitutional right to exemption from military duty for those whose religious beliefs would be violated by participation in war in any form. The argument involves the assumption that appellant's beliefs are such that he would be entitled to exemption from combatant service or training under the Constitution.

The argument here is specious. Reliance is placed upon Girouard v. U. S., 328 US 61, as having expressly overruled U. S. v. Schwimmer, 279 US 644, and U. S. v. Macintosh, 283 US 605. That is so, but only on the issue that an applicant for citizenship by way of naturalization is not disqualified because of refusal to make an absolute promise to bear arms.

On page 16 of his brief, appellant has stated the court's reply in U. S. v. Macintosh to the argument that it is a "fixed principle of our Constitution, zealously guarded by our laws, that a citizen cannot be forced and need not bear arms in a war if he has conscientious religious principles against doing so."

The Court's reply (p. 623):

> "This, if it means what it seems to say, is an astonishing statement. Of course, there is no such principle of the Constitution, fixed or otherwise. The conscientious objector is relieved from the obligation to bear arms in obedience to no constitutional provision, expressed or implied; but because, and only because, it has accorded with the policy of Congress thus to relieve him."

This is the law, and Girouard v. U. S. affected it not at all.

Wood v. U. S., 5 Cir.
373 F.2d 894

George v. U. S., 9 Cir.
196 F.2d 445

Storey v. U. S., 9 Cir.
370 F.2d 255

Richter v. U. S., 9 Cir.
181 F.2d 591,
cert. den. 341 US 892

Korte v. U.S., 9 Cir.
260 F.2d 633,
cert. den. 358 US 928

Petition of Green (supra)

If there were such a constitutional right, 50 USC APP. Sec. 456(j) would be superfluous.

Appellant argues that he is entitled to discharge under terms of DOD 1300.6.

Congress has provided for exemption from military service only in the case of inductees. 50 USC APP. 456(j). When a man enlists he changes his status. In Re Grimley, supra. Any claim he may have had was waived once had voluntarily enlisted. Petition of Green, supra.

50 USC APP Sec. 456(j) and the regulation thereunder do not apply to persons who enlist or who voluntarily enter upon active duty in the armed forces. Brown v. McNamara, supra.

The Department of Defense by Directive 1300.6 (Appendix II), I. Purpose, established "uniform procedures for the utilization of conscientious objectors in the Armed Forces, and consideration of requests for discharge on the grounds of conscientious objection. II: to apply "to all personnel, Army, Navy, Air Force and Marine Corps, and all Reserve Components thereof."

The Navy implemented this Directive by Section C-5210, Chapter 5, Bureau of Personnel Manual. The Army by AR 635-20 and AR 135-20. The Air Force by AFR 35-24. They all expressly state:

> "Policy. A. No vested right exists for any individual to be discharged from military service at his own request before the expiration of his term of service whether he is serving voluntarily or involuntarily. Administrative discharge prior to completion of his term of service is discretionary with the Service concerned based on a judgment of the facts and circumstances of the case."

"Policy. B. The fact of conscientious objection does not exempt men from the draft; however, the Congress has deemed it more essential to respect a man's religious beliefs than to force him to serve in the Armed Forces, and has accordingly recognized bona fide religious objection to participation in war in any form * * * consistent with this national policy bona fide conscientious objection by persons who are members of the Armed Forces will be recognized to the extent practicable and equitable."
[emphasis supplied.]

The key to the action of Congress is the word force. The military service effected by Selective Service induction is imposed on a man by law. The DOD Directive is concerned with men in the Service, voluntarily or involuntarily. Kanewske is serving voluntarily by enlistment. He seeks to terminate his contract prior to the completion of his term.

There is no question of the validity of petitioner's enlistment contract. The contract may be terminated only in accordance with the authority of Congress. 10 USC 3811, 10 USC 6291, 10 USC 8811. There is no statutory authority for the Court to terminate a valid enlistment contract.

Appellant was afford full opportunity to present his application, and appellees, pursuant to the applicable regulations, have denied the application. As was held in Brown v. McNamara, supra, the Federal Courts do not have jurisdiction to review this administrative determination. The Court in so holding quoted from Orloff v. Willoughby, 345 US 93-94:

> "We know that from top to bottom of the Army the complaint is often made, and sometimes with justification, that there is discrimination, favoritism or other objectionable handling of men. But judges are not given the task of running the Army. The responsibility for setting up channels through which such grievances can be considered and fairly settled rests upon the Congress and upon the President of the United States and his subordinates. The military constitutes a specialized community governed by a separate discipline from that of the civilian. Orderly government requires that the judiciary be as scrupulous not to interfere with legitimate Army matters as the Army must be scrupulous not to intervene in judicial matters."

Judge Prettyman, in Harmon v. Brucker, 243 F.2d 613, rev. on other grounds 355 US 579, chose to express the idea in terms of separation of powers (p. 619):

"Reason, flowing from the doctrine of the separation of powers, dictates that in many fields the administrative discretion of the executive branch and the legislative discretion of the legislative branch be not subject to interference or review by the courts."

Noyd v. McNamara, supra

Chavez v. Fergusson, Civil No. 46229, DC ND Calif., March 30, 1967.

Appellant asserts denial of due process.

The possible relief that may be accorded a claimant to conscientious objection is a matter of grace. The regulations provide the means for making application. There is no showing that the Navy did not follow its regulations. Procedural requirements of 50 USC APP 456(j) are not applicable. Brown v. McNamara, supra. Authorities citing reversing action of draft board because of procedural defects are not relevant. Appellant was given the opportunity to submit any and all evidence he desired. His application was reviewed and denied in accordance with the administrative regulations governing the Navy.

The court-martial that tried appellant clearly had jurisdiction. The Navy Department has not conceded appellant's claim. It has denied it. Appellant voluntarily swore in his enlistment contract to

> "obey the orders of the President of the United States and orders of officers appointed over me * * * So help me God."

He did not do so, and was court-martialed and convicted for not doing so.

Appellant's authorities involve draft inductees convicted of failing to report for military service. No court has ever reversed a court-martial conviction on the grounds that since the individual believed he is no longer subject to military law, he no longer has to obey orders of any kind. Appellant was subject to his military contract at the time of his offenses, and as such failed to obey orders at his peril.

CONCLUSION

It is respectfully submitted that the judgment of the District Court should be affirmed.

DATED: May 23, 1967.

CECIL F. POOLE
United States Attorney

By: _____
CHARLES ELMER COLLETT
Chief Assistant United States Attorney

Attorneys for Appellees.

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CERTIFICATE

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

_____
CHARLES ELMER COLLETT
Chief Assistant United States Attorney

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CERTIFICATE OF SERVICE BY MAIL

I hereby certify that a copy of the foregoing APPELLEES' BRIEF was served upon appellant by depositing the same in the United States mail at 450 Golden Gate Avenue, San Francisco, California, addressed to the Attorneys for the Appellant:

LLOYD E. McMURRAY, Esq.
McMURRAY & TEPPER
228 McAllister Street
San Francisco, California 94102

CHARLES ELMER COLLETT
Chief Assistant United States Attorney

DATED: May 24, 1967

designators, an entry shall be made on page 13 of the service record indicating such assignment and the authority therefor. This designator will also be entered in parenthesis as a standard part of each enlisted individual's identification on all pages 13 of the service record in the following manner:

~~BM2 (BM 0105/0000) (15-6)~~
PN1(PN-2412)

(3) This designator shall be included as part of each enlisted and inducted person's identification when transfer orders and correspondence regarding him by name are prepared.

(4) These designators shall not be changed or removed unless so authorized by the Chief of Naval Personnel.

(5) Unless assigned to one of the above categories an individual shall be considered potentially qualified for all types of duty.

(6) Personnel assigned to one of the above categories shall not be permitted to extend their enlistments, reenlist, or to further obligate themselves for additional active duty, unless so authorized by the Chief of Naval Personnel. Requests for extension, reenlistment, or additional active duty shall be forwarded sufficiently in advance to permit determination prior to expiration of service and should be accompanied by current report of physical condition, if appropriate.

C-5209. EMPLOYMENT OF STEWARD GROUP RATES

(1) As provided by Title 10, U.S. Code, Section 7579(a) - (b), "(a) Under such regulations as the Secretary of the Navy prescribes, enlisted members of the naval service and enlisted members of the Coast Guard when it is operating as a service in the Navy may be asigned to duty in a service capacity in officers' messes and public quarters where the Secretary finds that this use of the members is desirable for military reasons. "(b) Notwithstanding any other provision of law, retired enlisted members of the naval service and members of the Fleet Reserve and the Fleet Marine Corps Reserve may, when not on active duty, be voluntarily employed in any service capacity in officers' messes and public quarters without additional expense to the United States."

(2) Steward group rates may be assigned to duty only in:

(a) Officers' messes afloat, including flag messes, cabin messes, wardroom messes, and warrant officers' messes.

(b) Officers' messes temporarily set up on shore by order of competent authority, for a period of less than 6 months, for officers attached to:

1. Seagoing vessels.
2. Landing forces and expeditions.

(c) Commissioned officers' messes (closed), authorized by the Chief of Naval Personnel to provide either essential lodging or food service or both.

(d) Messes in which midshipmen or aviation cadets are subsisted.

(e) Individual public quarters of an officer on shore only when specifically authorized by the Secretary of the Navy. This authorization is indicated by a notation on the enlisted allowance of the appropriate activity issued by the Chief of Naval Personnel.

(f) Activities where officers (or other qualified patrons) are authorized to subsist in the General Mess in accordance with the provisions of paragraph 41065, BuSandA Manual.

(g) Officer and/or enlisted OPEN Messes in positions of Treasurer or Assistant Treasurer in accordance with Articles 303 and 304 of the Manual for Messes Ashore, NAVPERS 15951 **(series).**

(3) All steward group rates assigned to aircraft squadrons or detachments and aviation staff shall, when based ashore, be detailed to the support activity. All steward group rates assigned to staffs and units of the forces afloat and temporarily or permanently based ashore will similarly be assigned to the supporting shore activity, unless the commander has been specifically authorized by the Chief of Naval Personnel to operate a commissioned officers' mess (closed) ashore or unless excepted under subparagraph (2)(b) above.

(4) See article C-11101 for policy pertaining to employment in civil pursuits or outside regular working hours.

*C-5210. CONSCIENTIOUS OBJECTION TO NAVAL SERVICE

(1) The Secretary of Defense has established guidelines set forth herein for the utilization of personnel classed as conscientious objectors and for processing requests for noncombatant duty assignments or discharge from enlisted or inducted personnel based on conscientious objection. The following background information and criteria established by the Secretary of Defense for determining conscientious objection are furnished:

No vested right exists for any individual to be discharged from military service at his own request before the expiration of his term of service, whether he is serving voluntarily or involuntarily. Administrative discharge prior to the completion of his term of service is discretionary with the Secretary of the Navy, based on judgment of the facts and circumstances in the case. Federal courts have held that a claim to exemption from military service under the UMT&S Act must

rposed prior to notice of induction and to make timely claim for exemption utes waiver of the right to claim. ore, requests for discharge after g military service, based solely on ntious objection which existed but was med prior to induction or enlistment, be entertained. Similarly, requests for combatant duty assignment or a dis- based solely on conscientious objection d and denied by Selective Service prior tment cannot be entertained. Requests signment to noncombatant duties or rge from the naval service on the ns of conscientious objection will be ld on an individual basis, with final nination made by the Chief of Naval nel in accordance with the facts and stances in the particular case and the a set forth herein. In considering ts for noncombatant duty assignment harge based on conscientious objection ed after entering military service, rds used by the Selective Service h in determining 1-O or 1-A-O classifi- of draft registrants prior to induction applied. 1-A-O classification permits on into the military service and the ee is required to perform duties as out- n paragraph (3) of this Article. 1-O sification does not permit induction into ry service but does permit induction e Alternate Service Plan (Conscientious ors' Work Program). In either of the fications, the registrant is required to his obligations under the UMT&S Act. risory opinion by the Selective Service classification of 1-O is appropriate lly will be a requisite for discharge on conscientious objection for members ss than two years active service.

criteria for determining conscientious ion (other than the statutory require- that the objection be religious, as d to personal or philosophical) are not te objective measurements which can plied across the board, but are the of extensive experience and practices have been upheld in the Courts in con- n with legal obligations for service. g the factors considered are such items mbership in a peace church, training me and church, the general demeanor ttern of conduct of the individual, his yment in defense-connected activities, rticipation in religious acitivties, and edibility and the credibility of persons rting his claim. In the case of personnel able for induction after discharge be- of having served 180 days or more on duty, the individual's willingness to e voluntarily in post-military work of ature encompassed by the Alternate ce Plan of Selective Service may also be pertinent. While church membership and church tenets are relevant in determining conscientious objection, they are not compelling. The courts have held that mere membership in a religious group teaching conscientious objection is not an automatic basis for classification as a conscientious objector nor does membership in a group which does not require conscientious objection constitute an automatic basis for denying such classification. The law does not require affiliation with any particular group in order that an individual may be classified as a conscientious objector.

(2) Requests for discharge or assignment to noncombatant duties based on conscientious objection to naval service will be processed as follows:

(a) Individual requests will be submitted to the Chief of Naval Personnel via the commanding officer. Each request will be accompanied by a statement from the member containing the following information:

1. General Information:
   a. Full Name
   b. Service Number
   c. Selective Service Number
   d. Duty Station
   e. Permanent Home Address
   f. Give the name and address of each school and college which you have attended, together with the dates of your attendance, and state in each instance the type of school (public, church, military, commercial, etc.).
   g. Give a chronological list of all occupations, positions, jobs, or type of work, other than as a student in school or college, in which you have at any time been engaged, whether for monetary compensation or not, giving the type of work, name of employer, address of employer, and the from/to date for each position or job held.
   h. Give all addresses and dates of residence where you have formerly lived.
   i. Give the name and address of your parents and indicate whether they are living or deceased.
   j. State the religious denomination or sect of your father and mother.
   k. Did you apply to the Selective Service System (local board) for classification as a conscientious objector prior to entry into the Armed Forces? To which local board? What decision was made by the board, if known?
   l. If you have served less than 180 days in the military service and are discharged as a conscientious objector, are you willing to perform work under the Selective Service Conscientious Objectors' Work Program? Yes ___ No ___.

Will you consent to the issuance of an order for such work by your local Selective Service Board? Yes ___ No ___.

2. Religious Training and Belief:
   a. Do you believe in a Supreme Being?

b. Describe the nature of your belief which is the basis of your claim, and state whether or not your belief in a Supreme Being involves duties which to you are superior to those arising from any human relation.

c. Explain how, when, and from whom or from what source you received the training and acquired the belief which is the basis of your claim.

d. Give the name and present address of the individual upon whom you rely most for religious guidance.

e. Under what circumstances, if any, do you believe in the use of force?

f. Describe the actions and behavior in your life which in your opinion most conspicuously demonstrate the consistency and depth of your religious convictions.

g. Have you ever given public expression, written or oral, to the views herein expressed as the basis for your claim? If so, specify when and where.

3. Participation in Organizations:

a. Have you ever been a member of any military organization or establishment before entering the naval service for this tour? If so, state the name and address of same and give reasons why you became a member.

b. Are you a member of a religious sect or organization? If your reply is "yes" -

1. State the name of the sect, and the name and location of its governing body or head, if known to you.

2. When, where, and how did you become a member of said sect or organization?

3. State the name and location of the church, congregation, or meeting where you customarily attend.

4. Give the name, title, and present address of the pastor or leader of such church, congregation, or meeting.

5. Describe carefully the creed or official statements of said religious sect or organization in relation to participation in war.

(c) Describe your relationships with and activities in all organizations with which you are or have been affiliated, other than military, political, or labor organizations.

4. References: Give the name, full address, occupation or position, and relationship to you, of persons who could supply information as to the sincerity of your professed convictions against participation in war.

(b) The commanding officer and a chaplain, if available, shall interview the member and review the information contained in his request. The commanding officer's endorsement shall in all cases express his opinion as to the sincerity of the man and if request or recommendation is for assignment to noncombatant duties, make a recommendation as to whether or not the member concerned should be assigned to noncombatant duties or training and, if so, whether or not he is qualified and desires assignment to Hospital or Dental Corps School. If he does not desire such duties or training or is not qualified, the Commanding Officer shall state whether or not his services can be utilized on board his present duty station, if assigned a limited duty designator L-8. The chaplain's comments and opinion should be enclosed herewith. Pending action on his request, the individual will be assigned duties or training which provide the minimum conflict with his professed beliefs and will be required to maintain the same standards of performance and behavior as other personnel assigned to his unit.

(c) Immediately upon receiving a request for discharge on the grounds of conscientious objection, the commanding officer will advise and counsel the member concerning the provisions of Section 3103, Title 38, United States Code, which provides that the discharge of any person on the ground that he was a conscientious objector who refused to perform military duty or refused to wear the uniform or otherwise comply with lawful orders of competent military authority, shall bar all rights (except Government insurance) of such person under laws administered by the Veterans Administration based upon the period of service from which discharged or dismissed. The only exception is in cases in which it is established, to the satisfaction of the Administrator, Veterans Administration, that the member was insane. After counseling, the member will be required to sign, date, and submit as an enclosure to his request, the following statement: "I have been counseled concerning possible nonentitlement to benefits administered by the Veterans Administration due to discharge from the military service as a conscientious objector. I understand that a discharge as a conscientious objector, who refused to perform satisfactory military duty or otherwise to comply with lawful orders of competent military authority, may bar all rights based upon the period of service from which discharged, under any laws administered by the Veterans Administration except my legal entitlement (if any) to any war risk, Government (converted) or National Service Life Insurance."

(d) The Chief of Naval Personnel will refer the cases of all members who have completed less than 2 years of active duty to Selective Service for an advisory opinion. Discharge of members based solely on conscientious objection normally will not be made unless the member is classed as 1-O by Selective Service. The Chief of Naval Personnel may refer the cases of personnel who have completed more than 2 years active duty to Selective Service for an advisory opinion prior to final action. Discharge, when directed by

of Naval Personnel, will be by reason
mence of the government (Article
(1)(f) with type warranted by the
l's military record.

hose members who request discharge
hom 1-A-0 vice 1-0 classification is
ended by Selective Service normally
be discharged for conscientious ob-
easons. Such personnel, as well as
o initially requested noncombatant
will, if assigned limited duty desig-
(L-8) by the Chief of Naval Personnel,
gned as outlined in paragraph (3)b
ndividuals for whom neither 1-0 nor
assification is recommended by Se-
service normally will be retained in
l service, subject to normal duty
nents.

ersonnel who are assigned a 1-0 class-
n by Selective Service and whose dis-
s directed early enough so that dis-
ccurs prior to completion of 180 days
duty will be discharged for the con-
of the government by reason of con-
s objection to permit service in the
ntious Objector's Work Program. In
ases, the commanding officer will noti-
Director of Selective Service, Washing-
D.C., by letter of the date of discharge
e naval service, the fact that the
idual has not completed 180 days of active
d will request Selective Service to
he individual for the alternate service
d by the UMT&S Act.

ecoupment of reenlistment bonus, if
ll be required in those cases in which
ge is directed by the Chief of Naval
onel.

ssignment to Noncombatant Duties
aining.

efinitions:

Noncombatant duties are defined as -
ervice in any unit of the armed forces
unarmed at all times; or

ervice in the medical/dental depart-
any unit of the armed forces, where-
performed; or

ny other assignment the primary func-
which does not require the use of arms
at; provided that such other assign-
acceptable to the individual concerned
s not require him to bear arms in
or to be trained in their use.

Noncombatant training is defined as
ining which is not concerned with the
se, or handling of arms or weapons.

ssignments. Personnel assigned a
duty designator (L-8) by the Chief of
ersonnel or who have been classified
y their local induction board prior to
n will be assigned as follows:

sonnel who have not completed recruit
will be transferred to a Naval
enter for recruit training and
subject to all regular noncombatant
g as defined in subparagraph (3)(a)
. Further assign-
ment will be in accordance with subparagraph (3)(b)2. below.

2. Personnel who have completed recruit training who desire and are fully qualified in all respects, shall be transferred to the hospital/dental corps for further training and assignment. Such personnel, because of assignment to medical/dental units will not be allowed to avoid the important or hazardous duties which are the responsibility of all members of the medical/dental organization. Any man who does not desire such training or assignment and/or who does not meet the requirements therefor, or, if so assigned, fails to complete the course, will be retained in the service and employed in [illegible] duties. If the commanding officer cannot utilize the member in noncombatant assignment, he should report this fact to the cognizant personnel distributor who will transfer member to noncombatant duty assignment in a unit under his cognizance or effect his transfer to EPDOCONUS who will assign him to noncombatant duties.

(c) Personnel assigned to noncombatant training or duties in accordance with the above will be required to sign and date the following page 13 service record entry: "I have been counseled concerning designation as a conscientious objector. Based on my religious training and belief, I consider myself to be a conscientious objector and am conscientiously opposed to participation in combatant training and service. I request assignment to noncombatant duties for the remainder of my term of service. I fully understand that on expiration of my current term of service I am not eligible for voluntary enlistment, reenlistment, or active service in the Armed Forces."

(d) Personnel who are returned to normal duty assignments by reason of failing to qualify for designation as a conscientious objector or personnel who are assigned a limited duty designator (L-8) by reason of conscientious objection, and reassigned to noncombatant duties, who demonstrate inability or unwillingness to cooperate fully in the performance of their assigned duties, will be processed for administrative separation or disciplinary action, as appropriate, in the same manner as any other member of the naval service who demonstrates similar behavior.

(e) Article C-5208 contains instructions for assignment of limited duty designator. Pertinent instructions contained therein relative to service record entries and use of designator shall be followed. In addition, the following page 13 service record entry will be made upon an individual's assignment as L-8: NOT TO BE REENLISTED, EXTENDED OR PERMITTED TO FURTHER OBLIGATE WITHOUT PRIOR APPROVAL OF THE CHIEF OF NAVAL PERSONNEL. Appropriate diary entry will be made in accordance with the instructions contained in BAVPERS 15,642, Part I.

August 21, 1962
NUMBER 1300.6

ASD(M)

Department of Defense Directive

SUBJECT Utilization of Conscientious Objectors and Procedures for Processing Requests for Discharge Based on Conscientious Objection

References: (a) DoD Directive 1332.14, "Administrative Discharge"
(b) DoD Directive 1315.1, "Disposition of Conscientious Objectors," June 18, 1951 (cancelled herein)

I. PURPOSE

This Directive establishes uniform procedures for the utilization of conscientious objectors in the Armed Forces and consideration of requests for discharge on the grounds of conscientious objection.

II. APPLICABILITY

The policies and procedures set forth herein apply to all personnel of the Army, Navy, Air Force and Marine Corps and to all Reserve components thereof.

III. POLICY

A. No vested right exists for any individual to be discharged from military service at his own request before the expiration of his term of service, whether he is serving voluntarily or involuntarily. Administrative discharge prior to the completion of his term of service is discretionary with the service concerned, based on judgment of the facts and circumstances in the case.

B. The fact of conscientious objection does not exempt men from the draft; however, the Congress has deemed it more essential to respect a man's religious beliefs than to force him to serve in the Armed Forces, and accordingly has recognized bona fide religious objection

APPENDIX I

to participation in war, in any form, to the extent that such an objector (1-O classification) is not inducted into the Armed Forces but is required to serve his country for the same period of time in civilian work contributing to the maintenance of national health, safety, or interest under a prescribed Alternate Service Plan (Conscientious Objectors' Work Program). Consistent with this national policy, bona fide conscientious objection by persons who are members of the Armed Forces will be recognized to the extent practicable and equitable.

C. Federal courts have held that a claim to exemption from military service under the UMT&S Act must be interposed prior to notice of induction and failure to make timely claim for exemption constitutes waiver of the right to claim. Therefore, request for discharge after entering military service, based solely on conscientious objection which existed but was not claimed prior to induction or enlistment, cannot be entertained. Similarly, requests for discharge based solely on conscientious objection claimed and denied by Selective Service prior to induction cannot be entertained.

D. It is the policy of the Department of Defense that requests for discharge from the military service on the grounds of conscientious objection will be handled on an individual basis, with final determination made at the departmental headquarters of the individual's service in accordance with the facts and circumstances in the particular case and the criteria of this Directive. The type of discharge, if separation is deemed warranted, will be determined by the individual's military record, the standards set forth in reference (a), and the procedural guidelines herein.

E. In evaluating requests for discharge based on conscientious objection, great care must be exercised to insure the sincerity of the claim. It is essential that discharge procedures of the services not invite or permit abuse by unscrupulous persons who seek to avoid all obligations on the grounds of religious belief. Claims of conscientious objection by all persons, whether existing before or after entering military service should be judged by the same standards.

F. The standards used by the Selective Service System in determining 1-O or 1-A-O classification of draft registrants prior to induction are considered appropriate for application to cases of servicemen who claim conscientious objection after entering military service. 1-A-O classification permits induction into the military service and the inductee is required to perform duties as outlined in Section V.A. of this Directive. 1-O classification does not permit induction into military

service but does permit induction into the Alternate Service Plan (Conscientious Objectors' Work Program). In either of the classifications the registrant is required to fulfill his obligations under the UMT&S Act.

G. In order to insure the maximum practicable uniformity among the services and between members of the same service, advisory opinion by the Selective Service that a classification of 1-O is appropriate will normally be a requisite for discharge or release of members with less than two years active service based on conscientious objection.

IV. CRITERIA

A. The criteria for determining conscientious objection (other than the statutory requirement that the objection be religious, as opposed to personal or philosophical) are not absolute objective measurements which can be applied across the board, but are the result of extensive experience and practices which have been upheld in the Courts in connection with legal obligations for service. Among the factors considered are such items as membership in a peace church, training in home and church, the general demeanor and pattern of conduct of the individual, his employment in defense-connected activities, his participation in religious activities, and his credibility and the credibility of persons supporting his claim. In the case of servicemen not liable for induction after discharge because of having served 180 days or more, the individual's willingness to engage voluntarily in post-military work of the nature encompassed by the Alternate Service Plan of Selective Service may also be pertinent.

B. While church membership and church tenets are relevant in determining conscientious objection, they are not compelling. The courts have held that mere membership in a religious group teaching conscientious objection is not an automatic basis for classification as a conscientious objector nor does membership in a group which does not require conscientious objection constitute an automatic basis for denying such classification. The law does not require affiliation with any particular group in order that an individual may be classified as a conscientious objector.

C. Evaluation of the sincerity of a claim of conscientious objection requires objective consideration of professed belief not generally shared by persons in the military service. For that reason, particular care must be exercised not to deny bona fide convictions solely on the basis that the professed belief is incompatible with one's own.

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1300.5

PROCEDURE

A. 1. Individuals inducted into the Service who have previously been classified as 1-A-O by local induction boards should be assigned to noncombatant service, which in accordance with the President's Executive Order No. 10028, dated January 13, 1949, is defined as:

(a) service in any unit of the armed forces which is unarmed at all times;

(b) service in the medical department of any of the armed forces, wherever performed; or

(c) any other assignment the primary function of which does not require the use of arms in combat provided that such other assignment is acceptable to the individual concerned and does not require him to bear arms or to be trained in their use.

"The term 'noncombatant training' shall mean any training which is not concerned with the study, use, or handling of arms or weapons."

2. Such persons, upon induction into the Service, shall be transferred to a training center, or station, for recruit training and shall be subject to all regular training, except the portions thereof specifically excepted by Executive Order No. 10028 quoted in A.1, above. Thereafter, upon completion of recruit training, they shall be transferred to Hospital Corps, or Medical Department, for further training, provided they meet the requirements therefor. Such men, because of assignment to medical units will not be allowed to avoid the important or hazardous duties which are the responsibility of all members of the medical organization. Any man who does not meet the requirements for this training, or who fails to complete the course, will be retained in the service and employed in noncombatant duties.

B. Personnel who claim to be conscientious objectors and state that they were so classified by their local board but their records do not so indicate:

1. The Commanding Officer shall obtain a statement from the individual concerned and refer the case to the departmental headquarters of the individual's service for investigation and decision. The departmental headquarters will investigate the matter through Selective Service.

#First amendment (Ch 1, 8/30/62)

2. If it is determined that the man should have been classified as 1-A-O, but inadvertently was not so classified, the records will be corrected, and the Commanding Officer will be directed to correct his records accordingly. The man then will be processed as indicated in V.A. above.

3. If it is determined that no change in classification is warranted, the individual will be notified to this effect.

4. Upon first referring of the case, pending its decision, the individual should be retained at his command and employed in noncombatant duties.

C. 1. Individuals requesting discharge for conscientious objection will submit information as required in Inclosure 1 and such other documentation of their cases as is deemed appropriate by the military department concerned. In order to preserve the maximum practicable uniformity of treatment for like cases, requests and supporting papers will be forwarded, together with any other pertinent information known to the immediate command, to departmental headquarters for individual determination of action on the basis of the facts and the special circumstances of each case.

2. Immediately upon receipt of a request for discharge on grounds of conscientious objection, the member will be fully advised and counselled concerning the provisions of Section 3103, Title 38, United States Code. That section provides, in pertinent part, that the discharge of any person on the ground that he was a conscientious objector who refused to perform military duty or refused to wear the uniform or otherwise to comply with lawful orders of competent military authority, shall bar all rights (except government insurance) of such person under laws administered by the Veterans Administration based upon the period of service from which discharged or dismissed. The only exception is in cases in which it is established, to the satisfaction of the Administrator, that the member was insane. After counselling, the member will be required to sign and date the statement appended hereto as Inclosure 2.

3. Before making a determination concerning a possible discharge for conscientious objection in cases falling within the terms of Section III.G., the military department concerned will forward each case to the Director, Selective Service System, Washington 25, D.C., for an advisory opinion as to the individual's proper classification under the UMT&S Act. At the discretion of the military department concerned, advisory opinions may also be sought on members with two or more years service.

D. 1. Individuals for whom 1-O classification is recommended by Selective Service will be considered for discharge by reason of their conscientious objection to military service.

2. Individuals for whom 1-A-O classification is recommended normally will not be considered for discharge for conscientious objection reasons, but will be reassigned to noncombatant duties as outlined in Section V.A. of this Directive. Individuals so reassigned will be required to sign and date the statement appended hereto as Inclosure 3.

3. Individuals for whom neither 1-O nor 1-A-O classification is recommended by Selective Service will be retained in military service, subject to normal duty assignments.

4. If, in the judgment of the commander concerned, any individual reassigned to noncombatant duties or returned to his normal duty assignment demonstrates or has previously demonstrated his inability or unwillingness to cooperate in a manner which constitutes the basis for disciplinary action, action will be taken as in the case of any other member of the military service who demonstrates similar behavior.

E. 1. Individuals for whom 1-O classification is recommended by Selective Service will normally be discharged "For the Convenience of the Government." Conscientious objection will be cited as the supporting reason in order to avoid possible future confusion. Pending separation, the individual will be assigned duties providing the minimum conflict with his professed beliefs and will be required to maintain the same standards of performance and behavior as other personnel assigned to his unit.

2. Personnel with less than 180 days service (volunteers or inductees) who are determined to be bona fide conscientious objectors (1-O classification) and whose request for separation is made early enough so that discharge occurs prior to completion of 180 days active duty will be separated for the convenience of the government by reason of conscientious objection to permit service in the Conscientious Objectors' Work Program. In such cases, the Selective Service System will be promptly notified of the date of discharge from the military service, the fact that the individual has not completed 180 days active duty, and will be requested to "induct" the individuals for the alternate service provided by the UMT&S Act.

F. Determination by the military department, in accordance with the facts of the case and the guidelines furnished herein, shall be final with respect to the administrative separation of its members.

VI. IMPLEMENTATION AND EFFECTIVE DATE

A. All service regulations and policies in conflict with this Directive shall be cancelled immediately. Three copies of regulations implementing the policies contained herein will be furnished to the Assistant Secretary of Defense (Manpower) within 90 days from the date of publication of this Directive.

B. This Directive is effective immediately.

VII. CANCELLATION

Reference (b) is hereby superseded and cancelled.

Frank Carlucci
Deputy Secretary of Defense

Inclosures - 3
1. Required Information
2. Statement (counselling concerning VA benefits)
3. Statement (counselling concerning designation as conscientious objector)